

Private foundation; exchange of securities; self-dealing. An act of self-dealing will not result from the exchange of securities between a private foundation and a corporation that was previously a disqualified person by reason of the ownership of more than 35 percent of its total combined voting power by the former foundation manager, who resigned 5 years prior to the exchange, and who did not participate in planning the exchange offer during the period of disqualification.

Advice has been requested whether, under the circumstances described below, the proposed exchange of securities between a private foundation and a corporation will constitute an act of 'self-dealing' within the meaning of section 4941(d)(1)(A) of the Internal Revenue Code of 1954.

A private foundation that is the owner of certain shares of nonvoting stock of a particular corporation proposes to enter into a transaction with the corporation to exchange the nonvoting stock for certain other securities of the corporation. Pursuant to an offer made in 1976 to all owners of the nonvoting stock, the corporation has offered to purchase all of its outstanding nonvoting stock in exchange for cash and the corporation's debenture.

A former foundation manager of the foundation who resigned in 1970 owns more than 35 percent of the total combined voting power of the corporation. Prior to the foundation manager's resignation from the foundation, the corporation was a 'disqualified person' within the meaning of section 4946(a)(1)(E) of the Code with respect to the foundation by virtue of the manager's ownership of more than 35 percent of its total combined voting power.

The status of the corporation as a disqualified person with respect to the foundation rested solely upon the ownership of more than 35 percent of its total combined voting power by the former foundation manager. The status of the former foundation manager as a disqualified person with respect to the foundation rested solely upon his capacity as a foundation manager. All of the aspects of the proposed exchange of securities occurred after the resignation of the foundation manager who was not connected in any way with the proposed exchange while serving in the capacity of foundation manager.

Section 4941(d)(1)(A) of the Code defines the term 'self-dealing' as including any direct or indirect sale or exchange, or leasing, of property between a private foundation and a disqualified person.

Section 4946(a)(1)(B) of the Code defines the term 'disqualified person' to include, with respect to a private foundation, a person who is a foundation manager.

Section 4946(a)(1)(E) of the Code defines the term 'disqualified person' as including a corporation of which persons described in subparagraph (B) own more than 35 percent of the total combined voting power.

The corporation's status as a disqualified person was attributable only to the ownership of more than 35 percent of its voting power by another disqualified person, the foundation manager. Therefore, the resignation and separation from the foundation of the foundation manager terminated the status of the corporation as a disqualified person with respect to the foundation.

Accordingly, the exchange of securities between the foundation and the corporation, under the circumstances described above, will not constitute an act of self-dealing within the meaning of section 4941(d)(1)(A) of the Code.